

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JASMINE BENARD AUSTION,

Petitioner,

v.

SHANON D. WITHERS, et al.,

Respondents.

Case No. 2:24-cv-00579-GMN-MDC

DISMISSAL ORDER

Pro se Petitioner Jasmine Benard Austion has filed a Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241, challenging how his sentence in his federal criminal case¹ is being carried out, calculated, or credited by prison or parole authorities. (ECF No. 1-1 (“Petition”).) Specifically, Austion is disputing an incident that took place at the prison which resulted in him losing good-time credits. (*Id.* at 2.) This Court dismisses the Petition because (1) it has been improperly commenced and (2) this Court lacks jurisdiction.

I. DISCUSSION

Austion has not properly commenced this action by filing an *in forma pauperis* (“IFP”) application and or paying his filing fee. Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a \$5.00 filing fee is required to initiate a habeas action in a federal district court. This Court may authorize an indigent prisoner to begin a habeas action without

¹In his federal criminal case, case number 2:22-cr-00010-JAD-MDC-1, Austion was sentenced to three concurrent terms of 135 months. It appears that Austion recently filed a Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 and a Motion for Sentence Reduction in case number 2:22-cr-00010-JAD-MDC-1.

1 paying the \$5 fee if he or she submits an IFP application on the approved form and includes three
2 specific documents: (a) the prisoner's financial declaration and acknowledgement showing an
3 inability to prepay fees and costs, (b) a financial certificate signed by the prisoner and an authorized
4 prison official, and (c) a copy of the prisoner's account statement for the six-month period prior to
5 filing. 28 U.S.C. § 1915(a); LSR 1-1, LSR 1-2.

6 Further, this Court lacks jurisdiction over this case. Federal district courts may grant a writ
7 of habeas corpus when a petitioner is "in custody in violation of the Constitution or laws or treaties
8 of the United States." 28 U.S.C. § 2241(c)(3). Section 2241 provides, in relevant part, "Writs of
9 habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and
10 any circuit judge within their respective jurisdictions." 28 U.S.C. § 2241(a). The United States
11 Supreme Court has explained that the phrase "within their respective jurisdictions" in § 2241
12 "require[s] the presence of the prisoner within the territorial jurisdiction of the District Court as a
13 prerequisite to his filing of application for habeas corpus." *United States v. Hayman*, 342 U.S. 205,
14 220 (1952). The Ninth Circuit has further explained that when a petitioner and his custodian are
15 "within the territorial jurisdiction of the district court at the time the petition for writ of habeas
16 corpus [is] filed, the district court [has] jurisdiction to determine the merits of the litigation." *Smith*
17 *v. Campbell*, 450 F.2d 829, 834 (9th Cir. 1971). In his Petition, Austion states that he is currently
18 confined at United States Penitentiary Coleman 1 in Sumterville, Florida.² (ECF No. 1-1 at 1.)
19 Accordingly, neither Austion nor his custodian were within the territorial jurisdiction of the
20 District of Nevada on the date the Petition was filed.

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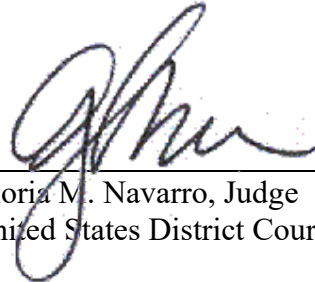
²Notably, USP Coleman 1 appears to be within the jurisdiction of the United States District Court
for the Middle District of Florida.

1 **II. CONCLUSION**

2 It is therefore ordered that the Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2241
3 (ECF No. 1-1) is dismissed with prejudice. Austion is denied a Certificate of Appealability, as
4 jurists of reason would not find dismissal of the Petition for the reasons delineated in this Order to
5 be debatable or wrong.

6 It is further ordered that the Clerk of Court (1) file the Petition (ECF No. 1-1), (2) enter
7 final Judgment dismissing this action with prejudice, and (3) close this case.

8 Dated: March 28, 2024

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11 Gloria M. Navarro, Judge
United States District Court
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